

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 11, 2009, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Robert Bartholomew
Ray Dwyer
Tom Day
Nancy Bonniwell
Rob Schuett

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Town of Merton Board of Adjustment
Richard L. Mace, Planning and Zoning Manager
Atty. Deborah B. Price, Principal Assistant Corporation Counsel
Nick Blavat, Deep River Partners, Ltd., BA09:002, contactor
Richard Sherer, Deep River partners, Ltd., BA09:002, contractor
Michael and Debbie Kusch, BA09:003, petitioners
Jerry Wolf, C G Schmidt, Inc., BA09:004, contractor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

ELECTION OF OFFICERS

Mr. Bartholomew: *I nominate Mr. Dwyer for Chairperson.*

Mr. Bartholomew asked three times if there were any other nominations. There were no additional nominations.

Mr. Day *I move to close the nominations and cast a unanimous ballot for Mr. Dwyer for Chairperson.*

The motion was seconded by Ms. Bonniwell and carried with four yes votes. Mr. Dwyer abstained.

Mr. Day: *I nominate Mr. Bartholomew for Vice-Chairperson.*

Mr. Dwyer asked three times if there were any other nominations. There were no additional nominations.

Mr. Day *I move to close the nominations and cast a unanimous ballot for Mr. Bartholomew for Vice-Chairperson.*

The motion was seconded by Mr. Dwyer and carried with four yes votes. Mr. Bartholomew abstained.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day

*I move to **approve** the Summary of the Meeting of January 28, 2009, with the following changes:*

In the motion to approve the Summary of the Meeting of December 10, 2008, located on Page 1, the words "staff's recommended" shall be inserted before the words "Condition No. 3 of BA08:071".

In the fourth sentence of Mr. Dwyer's motion regarding BA08:077, Jeff and Katie Radi, located on Page 3, the word "are" shall be inserted between the words "there" and "other".

In first paragraph of the "reasons for the recommendation, as stated in the Staff Report" for BA08:077, Jeff and Katie Radi, located on Page 3, the word "created" in the second sentence shall be changed to "creating" and the word "depicted" in the third sentence shall be changed to "depicting".

On Page 6, an additional sentence shall be added before the two italicized sentences regarding BA08:052, Martin and Carol Leonard. The additional sentence shall read as follows:

"Reference Staff Memorandum of January 28th and the Board's concluding that no new evidence was presented."

The motion was seconded by Ms. Bonniwell and carried unanimously.

NEW BUSINESS:

BA09:002 THOMAS AND SUSAN QUADRACCI (OWNERS)

NICK BLAVAT, DEEP RIVER PARTNERS . LTD (CONTRACTOR):

Mr. Day

*I move to **approve** the request, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Dwyer, who then offered the following additional reasons for approval:

The proposed construction is interior remodeling only and doesn't affect the exterior of the building. It doesn't change the outward appearance of the structure or have any adverse impact on the neighbors. Denial of the after-the-fact variance for the 1997 remodeling and expansion would require the current owners to undo the remodeling and expansion that was done by the previous owners, with a permit, which would constitute a hardship for the current owners.

Mr. Day indicated that he concurred with the additional reasons for approval that were set forth by Mr. Dwyer. The motion was carried with four yes votes. Ms. Bonniwell abstained*.

***Note: Ms. Bonniwell did not participate in the discussion of the decision in this case and abstained from voting in this matter because her law firm is affiliated with the Quadraccis.**

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the proposed remodeling of an existing powder room on the first floor and an existing master bathroom on the second floor of the Quadracci residence. The Planning and Zoning Division staff also recommended **approval** of an after-the-fact variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Waukesha County Shoreland and Floodland Protection Ordinance, to authorize remodeling and expansion of the residence done by a previous owner in 1997, consisting of remodeling and expansion of the kitchen and the addition of a mudroom and a covered porch on the west side of the residence, for which a Zoning Permit was issued in error by the Waukesha County Department of Parks and Land Use.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The residence is a substantial historic structure, which is non-conforming only because a corner of the covered porch extends approximately one (1) ft. into the shore setback area. The residence was permitted to be extensively remodeled and renovated in the past and denial of further variances to permit additional remodeling that is designed to update the home and bring it into conformance with current standards would be unnecessarily burdensome. In order to bring the home into conformance and eliminate the cumulative limit on remodeling non-conforming structure in excess of 50% of its fair market value, it would be necessary to reduce the size of the porch to eliminate the slight encroachment into the shore setback area. While this would eliminate the 50% cumulative limit on remodeling a non-conforming structure, it would serve no useful purpose and would cause the porch to be architecturally incompatible with the historic Victorian home. The remodeling and slight expansion of the residence that was done in 1997, which, due to an error on the part of the Planning and Zoning Division staff, was done with a Zoning Permit, but without the required variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Ordinance, and the currently proposed interior remodeling do not increase the non-conformity of the residence and are not contrary to the public interest. Therefore, the approval of variances to remodel a non-conforming structure in excess of 50% of its fair market value to authorize the remodeling and expansion that was done in 1997 and the currently proposed interior remodeling is in conformance with the purpose and intent of the Ordinance.

BA09:003 MICHAEL J. KUSCH:

Mr. Dwyer

*I move to **approve** the requested special exception, with the conditions recommended in the Staff Report and for the reasons stated in the Staff Report.*

Additional reasons for approval are as follows:

The proposed building is a replacement structure that is only minimally larger than the building it will be replacing, which is being done so the walls can be a standard dimension. Further, the neighborhood will benefit because the new shed will be replacing an “eyesore”.

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff’s recommendation was for **approval** of the request for a special exception from the accessory building floor area ratio requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a 24 ft. x 60 ft. storage shed, subject to the following conditions:

1. The shed must be built in substantial conformance with the plans submitted with the application.
2. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed shed must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed shed does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property and not adversely affect the neighboring properties or the private road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. The detailed Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 2.
4. A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating that the shed shall be used for personal storage only and may not be used for commercial purposes. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed’s office, and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The requested relief from the accessory building floor area ratio requirement is a special exception, rather than a variance. A special exception differs from a variance in that a special exception does not require the demonstration of an unnecessary hardship. However, when granting a special exception, it must be considered whether approval of the special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects. In addition, the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare.

The proposed shed is nearly the same size as the shed it would be replacing and would not be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood. The new shed will be more aesthetically appealing than the shed it is replacing and it will complement the other buildings on the lot. Further, the proposed shed, when considered alone, conforms with the accessory building floor area ratio and it is only because of the presence of the detached garage on the property that the maximum permitted accessory building floor area ratio is exceeded. The design of the residence, which is a remodeled structure originally constructed around 1895, is not conducive to the addition of an attached garage and it is felt that the petitioner should not be required to replace the shed that was lost with a smaller structure because the existing garage is not attached to the residence. Finally, the recommended Deed Restriction limiting the use of the shed to personal storage only, will protect the adjacent properties, as well as the public interest and welfare, by ensuring that the shed will not be used for commercial purposes. Therefore, the approval of the requested special exception from the accessory building floor area ratio requirement, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA09:004 WAUKESHA MEMORIAL HOSPITAL (OWNER)
C G SCHMIDT, INC. (CONTRACTOR):

Mr. Day

*I move to **approve** the request, with the conditions recommended in the Staff Report and for the reasons stated in the Staff Report.*

Additional reasons for approval are as follows:

This variance is similar to a variance that was granted last year to permit a temporary crane to be used on the hospital property. The cranes are not permanent and will be removed after the parking garage is completed. The cranes will be lowered to a conforming elevation when they are not in use and the site is more than 8,000 ft. from the runway, which reduces the potential for problems. In addition, the Waukesha County Airport Commission is in favor of granting the requested variance, with the recommended conditions. Finally, the project is essential to a hospital that serves the entire area. The proposed parking garage is desirable and granting the requested variance to allow the use of the three cranes that are necessary to complete it is to the public benefit.

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the height limitation of the Waukesha County Airport Height Limitation Ordinance, to permit three temporary construction cranes exceeding the maximum permitted height, to be used in the construction of a parking garage located west of the existing hospital building, subject to the following conditions:

1. The Federal Aviation Administration (F.A.A.) must complete an aeronautical study to determine the effect of the proposed temporary cranes on flight operations at the Waukesha County Airport and issue a "Determination of No Hazard to Air Navigation" for the proposed use of the temporary

cranes. A copy of the "Determination of No Hazard to Air Navigation" must be submitted to the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff, prior to operation of the cranes. All conditions of the F.A.A. "Determination of No Hazard to Air Navigation" must be complied with.

2. The temporary cranes must be marked and lighted in conformance with the guidelines for obstruction lighting found in Federal Aviation Administration Advisory Circular AC 70/7460-1K Obstruction Marking and Lighting, marked - Chapters 3 and 12.
3. The cranes must be lowered below the maximum permitted elevation of 1,048 ft. above mean sea level (AMSL) when not in use.
4. The crane operators must be in contact with the Waukesha County Airport tower to ensure that the operation of the cranes will not be restricting air flight patterns and to place the airport on notice that the cranes are in operating condition and may exceed the height limitations on a given day.
5. The cranes must be removed from the property by December 31, 2009, unless extended by the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff for extenuating circumstances.
6. A favorable recommendation must be received from the Waukesha County Airport Commission. If their recommendation includes any conditions, those conditions shall be an integral part of this variance approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow limited temporary use of the cranes in a manner that will not be a hazard to the safe operation of aircraft and will allow the parking garage, which is essential for the operation of the hospital, to be constructed as proposed. Although the cranes will exceed the height limitation, their temporary and occasional use during normal operating hours, with the limitations recommended above, will not compromise the safety of pilots and their passengers, people living in the vicinity of the Waukesha County Airport, or the general public. Therefore, the approval of this request, with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Waukesha County Airport Height Limitation Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

DISCUSSION AND ACTION ON BOARD OF ADJUSTMENT POLICY CHANGES AND AMENDMENTS TO THE BOARD OF ADJUSTMENT RULES OF PROCEDURE

Amendments to the Board of Adjustment Rules of Procedure were discussed with Dick Mace, Planning and Zoning Division Manager and Atty. Debbie Price, Principal Assistant Corporation Counsel. No action was taken on the proposed amendments. Atty. Price will prepare a draft of proposed amendments to the Board of Adjustment Rules of Procedure, based on the discussion, for review and possible approval at the next meeting, which will be held on March 11, 2009.

The Board briefly discussed possible policy changes and decided that they would make decisions immediately following the close of each public hearing, rather than completing all public hearings and then making the decisions. It was decided that other possible policy changes would be discussed at the next meeting, which will be held on March 11, 2009.

APPROVE THE ATTENDANCE OF BOARD OF ADJUSTMENT MEMBERS AT A ZONING BOARD OF APPEALS AND ADJUSTMENT WORKSHOP

Mr. Day *I move to approve the attendance of Board of Adjustment members at the Zoning Board of Appeals and Adjustment Workshop sponsored by the Center for Land Use Education, the Wisconsin County Code Administrators, and the Wisconsin Department of Natural Resources, to be held in Green Lake, Wisconsin, on February 20, 2009.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

ADJOURNMENT:

Mr. Day *I move to adjourn this meeting at 9:52 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment